

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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REGINAL McDONALD,

Plaintiff,

v.

OLIVAS, et al.,

Defendants.

Case No. 3:13-cv-00240-MMD-WGC

ORDER ADOPTING AND ACCEPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

On March 26, 2015, after Plaintiff failed to appear at the status conference, the Magistrate Judge recommended dismissal of Plaintiff's action with prejudice based on Plaintiff's failure to appear at two court hearings and failure to notify the Court of his current address. (ECF No. 158.) The Court adopted the recommendation on May 11, 2015. (ECF No. 165.) About six months later and over a month after he filed a Notice of Change of Address, Plaintiff moved for reconsideration. (ECF Nos. 167, 169.) Plaintiff asserts he has valid reasons for his failure to prosecute this action, including his physical and mental impairment, his homeless condition and his mistaken belief that he had legal representation. (ECF No. 169 at 1-3.) The Court construed Plaintiff's motion for reconsideration as a request to reconsider the Magistrate Judge's recommendation and referred the motion to Judge Cobb. (ECF No. 172.)

The Magistrate Judge directed several unsuccessful attempts to contact Plaintiff to schedule a hearing on his motion for reconsideration and to make inquiries with Plaintiff's putative counsel. (ECF No. 187.) Accordingly, the Magistrate Judge issued a Report and Recommendation ("R&R"), denying Plaintiff's motion for reconsideration and

1 recommending that the Court dismiss this action with prejudice. (ECF No. 187.) Plaintiff
2 had until July 7, 2016 to file an objection. (*Id.*) Once again, Plaintiff failed to timely object.
3 Moreover, as detailed in the R&R and reflected in the docket, mail sent to Plaintiff's
4 address as reflected in his latest Notice of Change of Address has been returned as
5 "undeliverable." (ECF Nos. 177, 178, 182, 183, 184, 185, 187, 188, 189.)

6 This Court "may accept, reject, or modify, in whole or in part, the findings or
7 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
8 timely objects to a magistrate judge's report and recommendation, then the court is
9 required to "make a *de novo* determination of those portions of the [report and
10 recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails
11 to object, however, the court is not required to conduct "any review at all . . . of any issue
12 that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
13 Indeed, the Ninth Circuit has recognized that a district court is not required to review a
14 magistrate judge's report and recommendation where no objections have been filed. See
15 *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard
16 of review employed by the district court when reviewing a report and recommendation to
17 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
18 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
19 view that district courts are not required to review "any issue that is not the subject of an
20 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
21 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
22 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
23 which no objection was filed).

24 Despite Plaintiff's failure to object to the R&R, the Court has conducted another
25 *de novo* review to determine whether to adopt Magistrate Judge Cobb's R&R. Upon
26 reviewing the R&R and records in this case, this Court finds good cause to adopt the
27 Magistrate Judge's R&R in full. Plaintiff has been given numerous opportunities to
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1 update the Court on his current address and to prosecute this action. Yet, Plaintiff
2 continued to fail to even update his address after seeking reconsideration.

3 It is therefore ordered, adjudged and decreed that the Report and
4 Recommendation of Magistrate Judge William G. Cobb (dkt. no. 187) is accepted and
5 adopted in its entirety.

6 It is further ordered that this action is dismissed with prejudice.

7 The Clerk is directed to close this case.

8 DATED THIS 15th day of July 2016.

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11 MIRANDA M. DU
12 UNITED STATES DISTRICT JUDGE
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